

STATE OF MICHIGAN
COURT OF APPEALS

KAREN M. FILAREY-CHANDLER,

Plaintiff-Appellant,

v

COLONIAL COURT APARTMENTS, STUART
FRANKEL DEVELOPMENT COMPANY, and
OAKLAND COURT COMPANY,

Defendants-Appellees.

UNPUBLISHED

June 8, 2004

No. 246753

Oakland Circuit Court

LC No. 02-037301-NO

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff resided in defendants' apartment complex. Plaintiff exited her apartment through the rear door, slipped on ice located under the snow on the patio, and then slipped a second time when she attempted to descend the patio steps. Plaintiff filed suit alleging that defendants negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), finding that the condition of the patio was open and obvious.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). A possessor of land may be held liable for injuries resulting from negligent maintenance of the land. *Id.*, 610. The duty to protect an invitee does not extend to a condition that is so open and obvious that an invitee could be expected to discover it for himself, unless an unreasonable risk of harm remains. *Id.* at 610-612.

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. See *id.*, 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence

would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. *Lugo v Ameritech Corp*, 464 Mich 512, 517; 629 NW2d 384 (2001). If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *See id.*, 517-519.

We affirm. As a general rule, and absent special circumstances, the hazards presented by ice and snow are open and obvious, and do not impose a duty on the property owner to warn of or remove the hazard. *See Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002). The danger presented by snow-covered ice is open and obvious where the plaintiff knew of, and under the circumstances an average person with ordinary intelligence would have been able to discover, the condition and the risk it presented. *Joyce v Rubin*, 249 Mich App 231, 239; 642 NW2d 360 (2002). Plaintiff acknowledged that she observed ice and snow in front of her building and snow on the patio at the rear of her building, and that she recognized the danger of falling on ice and snow. The trial court correctly found that the danger presented by the presence of ice and snow on the patio was open and obvious. *Corey, supra*, 6.

Plaintiff failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. Contrary to plaintiff's assertion, an alternative route, specifically her front door, was available for use. *Lugo, supra*, 518. Furthermore, the risk of falling down several ice-covered steps has been held not to constitute a special aspect that renders the presence of snow and ice unreasonably dangerous notwithstanding its open and obvious nature. *Corey, supra*, 6-7.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter